IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.614 OF 1987

1. Digambar Banda Chaudhari
2. Daji Banda Chaudhari
3. Bhagwan Banda Chaudhari
4. Namdeo Banda Chaudhari ...Appellants

Versus

Smt.Kusum Manik Chaudhari ...Respondent

Shri A.A.Kumbhakoni for the Appellants
Shri S.D.Thokade for the Respondent.

CORAM: A.S.OKA, J.

DATED: JULY 29, 2004.

ORAL JUDGMENT :

1. This Second Appeal was admitted on 12th February 1988 by passing following order :

. " The substantial question of law is whether a widow of a predeceased son (died in 1951) can enforce a partition of H.U.F. property ?

. Admit."

2. I have heard the learned Counsel appearing for the parties on the aforesaid substantial question of law. The learned Counsel for the Appellants

submitted that apart from the substantial question of law which is already framed one more substantial question of law arises as under :

. "Whether the Judgment of the Appellate Court is perverse ?

3. I have also heard the Counsel appearing for the parties on the aforesaid question.

4. The Respondent claims to be widow of one Manik Chaudhari and the Appellants are the sons of one Banda Chaudhari. It is the case of the Respondent that her husband Manik was one of the sons of Banda Chaudhari. The case of the Respondent is that she had lawfully married to Manik who was a member of Hindu joint family. The case of the Respondent is that within 14 days of the marriage i.e. on 13th July 1951 Manik died. At that time he was a member of Hindu joint family. The Respondent claimed one fifth share in the property held by Banda Chaudhari who expired on 13th November 1958. A suit was filed by the Respondent praying for partition and separate possession of one fifth share in the suit property. In the alternative the Respondent prayed for a decree of maintenance in the sum of Rs.75/- per month.

5. The Appellants resisted the suit by filing written statement and denied the factum of marriage. The Trial Court dismissed the suit filed by the Respondent by holding that the marriage was not established. In an Appeal preferred by the Respondent, the District Court has set aside the Decree of dismissal and has passed a decree for partition and separate possession in respect of one sixth share. Being aggrieved by the Decree of the Appellate Court, the Appellants have preferred the present Appeal.

6. The learned Counsel appearing for the Appellants submitted that the Trial Court after considering the evidence on record held that the Respondent has failed to prove the factum of marriage. He submitted that the entire approach of the Appellate Court was perverse. He submitted that the evidence of the Respondent ought to have been dis-believed as even according to the Respondent her age was 5 years at the time of marriage and after lapse of 32 years, the Respondent was obviously not in position to remember anything which transpired when she was only 5 years old. He submitted that the Appellate Court committed an error by holding that the burden shifted on the Appellants to show that the deceased Manik remained bachelor till his death. He submitted that no such

burden could have been put on the Appellants. He also criticised the observations made by the Appellate Court by which the Appellate Court has recorded that when the witness deposes on oath, his evidence will have to be presumed to be true unless shown to be false. He submitted that if the entire evidence is read and considered it is very clear that no prudent person will come to the conclusion that factum of marriage is established. The learned Counsel for the Respondent-Plaintiff has supported the findings recorded by the Appellate Court.

7. As the Trial Court has recorded a finding in favour of the Appellant and as the submission made by the learned Counsel for the Appellants was that the findings of the Appellate Court were perverse, I permitted the learned Counsel for the Appellants to read notes of evidence. The Respondent stepped into the witness box and stated that the marriage had taken place. She stated the name of the priest who had performed the ceremony. In paragraph No.11 of the cross examination, the Respondent has stated that for about 20 years the Appellants had provided her annual maintenance in the form of one bag of Jawar, half bag of wheat and half bag of rice. The Respondent examined her father who naturally supported her case. The Respondent examined one

Khelba who is admitted not related to both the parties. He deposed in support of the Respondent on the factum of marriage. The Appellant No.1 stepped into the witness box. His examination-in-chief runs into only 3 sentences which are as under :

. "Manik was my real brother. He died un-married. Kusum never came to my house."

8. When the Respondent clearly deposed that for 20 years she was maintained by the Appellants by supplying regular foodgrains and that two witnesses including one independent witness were examined to establish the factum of marriage, the Appellant No.1 has only stated that his brother died un-married. In the examination-in-chief there is no denial of the fact that for 20 years maintenance was provided to the Respondent by the Appellants.

9. When evidence was recorded in the year 1983, the parties have deposed of the events which have taken place at least 30 years earlier. Considering the evidence on record the Appellate Court came to the conclusion that there was no reason to dis-believe the evidence of father of the Respondent and the independent witness Khelba who was an old man from the village. It is true that there was no negative

burden on the Appellants to prove that the deceased Manik remained bachelor till his death. The Appellate Court has decided the Appeal on merits and not only on the basis of the said burden which was put on the Appellants. The Appellate Court has considered the evidence of all the witnesses and has extensively considered the version of the witness. After considering the evidence on record the Appellate Court came to the conclusion that the marriage between the Respondent and deceased Manik was proved. If the entire oral evidence is perused it is obvious that the conclusion reached by the Appellate Court is a possible conclusion. Merely because it is possible to draw some other conclusion from the evidence on record is no ground to say that the same will make the Judgment of the Appellate Court perverse. Therefore, the finding recorded by the Appellate Court as regards the marriage is not vitiated by perversity or illegality.

10. The Appellate Court relied upon Section 14 of the Hindu Succession Act, 1956 and rightly came to the conclusion that after the Respondent acquired limited interest in the properties on the demise of her husband, the said limited interest ripened into the absolute ownership by virtue of Section 14 of the said Act of 1956.

11. In the circumstances, there is no merit in the Section Appeal and the same is dismissed with no order as to costs.

JUDGE